

BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION
STATE OF NEBRASKA

Douglas D. Christensen
Commissioner of Education
301 Centennial Mall South, 6th Fl.
P.O. Box 94933
Lincoln, NE 68509-4933

Petitioner,

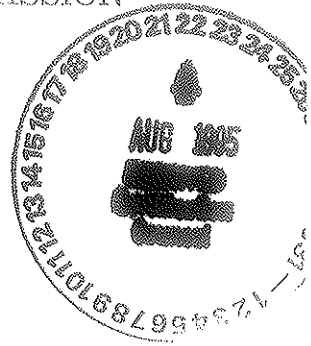
vs.

Constance Porzelt
13434 Sherwood Avenue
Omaha, NE 68134

Respondent.

N.P.P.C. Case No. 95-9

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION OF
THE COMMISSION



I. STATEMENT OF THE CASE

This case commenced with the filing of a Petition on April 12, 1995, by Douglas D. Christensen, Commissioner of Education, Department of Education, State of Nebraska, hereinafter referred to as "Petitioner." The Petition was filed against Constance Porzelt, hereinafter referred to as "Respondent." The Petition alleges certain acts of conduct by the Respondent in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 003.03F, having an effective date of December 25, 1984, Section 004.04E, having an effective date of December 25, 1989; and Neb. Rev. Stat., Section 79-1282(2) (Reissue 1994).

On April 12, 1995, Brian Halstead, the Certification Counsel of the Nebraska Department of Education, gave Respondent notice of her right to submit an answer within twenty-one (21) days after receipt of that notice. On or shortly after May 1, 1995, through Benjamin M. Belmont, her attorney, the Respondent filed such an Answer admitting her residence and that she holds a Nebraska Public school certificate No. 147-44-1608, Type 2, Rank E, Level 7, endorsed in English 7-12 and Humanities 7-12, with an expiration date of August 31, 1999. The Respondent also admitted that on October 18, 1994, she appeared in the Douglas County Court and entered a plea of no contest to the charge of theft by shoplifting, in violation of Neb. Rev. Stat., Section 28-511(1) (a), (Reissue 1994), a Class II misdemeanor, and that said court found her guilty of the offense and sentenced her to a term of probation of one year. The Respondent further admitted that she has previously been convicted on two occasions of the offense of shoplifting, for an offense occurring on or about August 22, 1991, and for an offense occurring on or about March 24, 1986. The Respondent denied each and every other allegation in the Petition not admitted, and alleged that she has never been convicted of a felony, nor have any of her actions constituted immoral acts.

On or about , July 11, 1995, Kathi Vontz, the Clerk of the Professional Practices

Commission, hereinafter referred to as the "Commission", sent a notice of hearing to all parties advising that public hearing on the Petition and Answer would be held on the 7th day of August, 1995, in the State Board Hearing Room, sixth floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before a designated hearing committee of the Commission, with Barbara Blackburn serving as chair. The notice further stated that Samuel Van Pelt would serve as legal counsel to advise the Chair in the performance of her duties.

At the above time and place, the Petition and Answer came on for hearing before Commission Members Barbara Blackburn, Deanna Gillham, Carolyn Grice, Janice Hinds, John Miller, John Nelson, Roger Rea, and Joe Reinert. Barbara Blackburn served as Chairperson of the hearing panel; Samuel Van Pelt served as legal counsel advising the Chairperson in the performance of her duties; and the proceedings were reported by Gloria Sapp of General Reporting Services, Lincoln, Nebraska. The Petitioner appeared by his Certification Counsel, Brian Halstead. The Respondent was present in person and with her attorney, Benjamin M. Belmont. Exhibits were received, and testimony was adduced, after which the parties rested and made their closing arguments and summation. Accordingly, the Commission makes the following findings of fact, conclusions of law and order:

II. FINDINGS OF FACT

1. The Petitioner is the Commissioner of Education of the State of Nebraska. The Respondent holds a Nebraska public schools teaching certificate, No. . . . 1606, Type 2, Rank E, Level 7, endorsed in English 7-12 and Humanities 7-12, with an expiration date of August 31, 1999.

2. On October 18, 1994, the Respondent was found guilty in the Douglas County Court of a charge of theft by deception, in violation of Neb. Rev. Stat., Section 25-511(1) (a), a Class II misdemeanor, after having entered a plea of no contest to the charge.

3. The Respondent, on two prior occasions, has been convicted in the Douglas County Court for the offense of theft by shoplifting, such offenses occurring on or about August 22, 1991 and March 24, 1986.

III. DISCUSSION

Neb. Rev. Stat., Section 79-1282(2) (Reissue 1994) states that the Board of Education for just cause may revoke or suspend any teacher's certificate for violation of the standards established pursuant to the above section, for commission of an immoral act, or for conviction of a felony under the laws of the State. Section 003.03F of Title 92, Nebraska Administrative Code states that an educator shall not commit any crime involving moral turpitude. Section 004.04E states that the educator shall not commit any act of moral turpitude.

Although larceny and theft generally are crimes involving moral turpitude, *Hruby v. Kalina*, 228 Neb. 718 (1988), the circumstances surrounding Respondent's shoplifting, as reflected in the evidence do not constitute an act of baseness, vileness, or

depravity sufficient to warrant suspension or revocation of her certificate. However, her conduct is not to be condoned or encouraged, and she therefore, should be publicly reprimanded for the same, and put on notice that any similar conduct in the future will be treated more seriously. Respondent should engage in all necessary counseling and therapy to ensure that similar conduct not be repeated in the future.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case and all proceedings have been in accordance with applicable constitutional, statutory, and regulatory requirements.

2. The Petitioner has proved by a preponderance of the evidence that the Respondent has engaged in conduct which warrants a public reprimand.

3. The Petitioner has failed to prove by a preponderance of the evidence that Respondent has engaged in an act of moral turpitude or immoral act.

V. ORDER

Therefore, the Commission and its hearing committee orders that Constance Porzelt, holder of Nebraska Public Schools teaching certificate No. -1606, be publicly reprimanded for shoplifting, and for failing to obtain necessary treatment and counseling to prevent this conduct.

Dated this 22nd day of August 1995.



Nebraska Professional Practices Commission
By Barbara Blackburn
Chairperson of Hearing Committee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Recommendation of the Commission for Case No. 95-9 was served upon Respondent's Attorney by first class mail, postage prepaid, and hand delivered to Brian Halstead on this 22nd day of August, 1995, at the following addresses:

Benjamin M. Belmont
Respondent's Attorney
477 Continental Building
Omaha, NE 68102

Brian Halstead
Attorney for Petitioner
Nebraska Department of Education
301 Centennial Mall South
Lincoln, NE 68509



Kathi Vontz, Clerk
Nebraska Professional Practices
Commission